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Attorneys for Plaintiff MARSHA GINSBURG
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10 In the United States District Court
In and for the Northern District of California
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13 MARSHA GINSBURG,

No. 08-03031 JSW

14 Plaintiff,

APPLICATION REQUESTING
MODIFICATION OF BRIEFING
SCHEDULE ALLOWING
PLAINTIFF TO FILE
OPPOSITION TO MOTION
TO DISMISS BY SEPTEMBER
12, 2008; STIPULATION;
[PROPOSED] ORDER

15 -v-

16 HEARST COMMUNICATIONS, INC.;
17 HEARST CORPORATION; HEARST
18 NEWSPAPERS,

Local Rule 7-11

19 Defendants.
20 _____/

Hearing Date: 10-3-2008

Time: 9:00 a.m.

Judge: Hon. Jeffrey S.
White

Courtroom: 2

Complaint Filed: 6-20-2008

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24 Louis A. Highman declares as follows:

25 I am the lead attorney of record for plaintiff Marsha
26 Ginsburg in the above-entitled matter.
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1 I received electronically defendants' motion to dismiss
2 pursuant to FRCP 41(b), or in the alternative, for a more
3 definite statement pursuant to FRCP 12(e) on August 15, 2008,
4 and since the hearing date was October 3, 2008, it was
5 calendared on our master calendar so that the opposition was
6 due on September 12, 2008. Kevin Mendez, our legal assistant,
7 was in charge of the above procedure, and it was followed in
8 connection with the August 15, 2008 motion.

9 The procedure in our office is that our legal assistant,
10 Kevin Mendez, receives the electronic orders in cases, and
11 forwards them to the lead attorney working on the case.

12 I was unaware there had been an order setting briefing
13 schedule ordered by the Court on August 18, 2008, under which
14 plaintiff's time to respond to the motion to dismiss was
15 changed by the Court to August 29, 2008 from the September
16 12, 2008 which applied previously, until I received
17 Defendants' Notice of Unopposed Motion to Dismiss dated
18 September 5, 2008, which was printed out and given to me by
19 my legal assistant, Mr. Mendez, on September 8, 2008.
20 Defendants' Notice of Unopposed Motion to Dismiss dated
21 September 5, 2008 indicated that since my brief was due on
22 August 29, 2008 (which I had not known previously), that I
23 was now late, and requested based thereon that the motion to
24 dismiss should be granted.

25 I immediately spoke to Mr. Mendez to figure out what had
26 happened since he had put down in the master calendar that
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1 plaintiff's opposition to the motion was due on September 12,
2 2008, which date of September 12, 2008 was the normal date
3 under the local rules on which the opposition would be due
4 unless there would be some order by the Court to the
5 contrary. As indicated above, I had been unaware of the
6 August 18, 2008 order which had changed the due date of
7 September 12, 2008 to August 29, 2008, and the change had not
8 been put down on our master calendar or otherwise
9 communicated to me.

10 After receiving Defendants' Notice of Unopposed Motion
11 to Dismiss, Mr. Mendez and I went into the Pacer site, and
12 realized that the notice of the order changing the briefing
13 schedule had been sent to our office electronically on August
14 18, 2008 (the date the order was made), but for some reason
15 Mr. Mendez had not printed out and given me a copy of that
16 order, or e-mailed me that order, or otherwise notified me of
17 that order; nor did he recall seeing the order previously. I
18 was out of town from August 18, 2008 until early morning,
19 August 21, 2008, and continued to operate under the
20 assumption when I came back that the due date for my
21 opposition was September 12, 2008.

22 I apologize for our inadvertence on this matter. Our
23 office wishes to oppose this motion to dismiss/motion for
24 more definite statement, and accordingly I wish to
25 respectfully request that I be allowed to file an opposition
26 to Defendants' Motion to Dismiss Pursuant to FRCP 41(b), Or
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1 in the Alternative, for a More Definite Statement Pursuant to
2 FRCP 12(e) on behalf of plaintiff on or before September 12,
3 2008 (which was the date I continued to understand was the
4 date on which the opposition would be due because of the
5 inadvertence in not downloading the August 18, 2008 order
6 which changed the original scheduling, but remained
7 unbeknownst to me at the time), and that defendants' reply
8 brief be filed on or before September 19, 2008, and that the
9 hearing date for the motion remain the same (October 3,
10 2008).

11 I spoke to Mr. Lindbergh Porter, Esq., attorney for
12 defendants on the telephone today, and he indicated he did
13 not oppose the aforesaid extension of briefing schedule
14 dates.

15 I declare under penalty of perjury that the foregoing
16 is true and correct, and was executed at San Francisco,
17 California on September 8, 2008.

18 /s/Louis A. Highman
19 Louis A. Highman, Declarant

20 **STIPULATION RE BRIEFING SCHEDULE**

21 It is hereby stipulated by the parties to the above-
22 entitled matter, that plaintiff Marsha Ginsburg be allowed to
23 file an opposition to Defendants' Motion to Dismiss Pursuant
24 to FRCP 41(b), Or in the Alternative, for a More Definite
25 Statement Pursuant to FRCP 12(e) on or before September 12,
26 2008, and that defendants' reply brief be filed on or before
27 September 19, 2008, and that the hearing date remain the same

1 (October 3, 2008).

2 DATED: September 8, 2008.

3 LOUIS A. HIGHMAN
4 HIGHMAN, HIGHMAN & BALL

5 By /s/Louis A. Highman
6 Attorneys for Plaintiff
7 MARSHA GINSBURG

8 DATED: September 8, 2008.

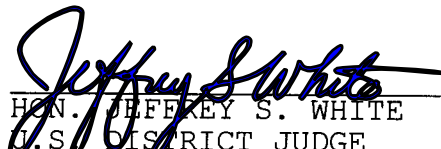
9 LINDBERGH PORTER
10 LITTLER MENDELSON

11 By /s/Lindbergh Porter
12 Attorneys for Defendants
13 THE HEARST CORPORATION
14 and HEARST
15 COMMUNICATIONS, INC. dba
16 HEARST NEWSPAPERS

17 **[PROPOSED] ORDER**

18 GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that
19 plaintiff Marsha Ginsburg be allowed to file an opposition to
20 Defendants' Motion to Dismiss Pursuant to FRCP 41(b), Or in
21 the Alternative, for a More Definite Statement Pursuant to
22 FRCP 12(e) on or before September 12, 2008, and that
23 defendants' reply brief be filed on or before September 19,
24 2008, ~~and that the hearing date for the motion remain the~~
25 ~~same (October 3, 2008).~~

26 DATED: September 8, 2008.

27 
28 HON. JEFFEREY S. WHITE
U.S. DISTRICT JUDGE

29 The Court's Order to Show Cause, issued this date, is DISCHARGED. Counsel is
30 admonished that any future failures to comply with briefing orders issued by this Court
31 may result in sanctions being imposed. The Court already has continued the hearing
32 from October 3, 2008 to October 17, 2008, and the hearing shall remain on calendar on
33 October 17, 2008, and the parties shall file their opposition and reply briefs in accordance
34 with the deadlines set forth above.